

AGENCY TASK FORCE ON THE LAW OF THE SEA
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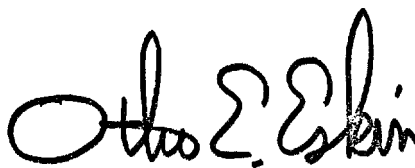
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June 18, 1975

MEMORANDUM

TO: Members of the LOS Executive Group
SUBJECT: ICAO Report on LOS Conference

Attached for your information is a report of the Secretary-General of ICAO on the Geneva session of the LOS Conference.



Otho E. Eskin
Staff Director

Attachment:

As stated

State Dept. review completed

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INTERNATIONAL CIVIL
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ORGANISATION DE L'AVIATION
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МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ
ГРАЖДАНСКОЙ АВИАЦИИ

INTERNATIONAL AVIATION BUILDING, 1080 UNIVERSITY STREET, MONTREAL 101, QUEBEC, CANADA


SG 759/75

E 2/22.1

3 June 1975

To: Representatives on the Council
From: Secretary General
Subject: Report on the Third Session of the Third United Nations Conference on the Law of the Sea

I have the honour to transmit herewith the Report of the ICAO Observer, Dr. C. Gómez Jara, Director of the Legal Bureau, at the Third Session of the Third United Nations Conference on the Law of the Sea, held at Geneva from 17 March to 9 May 1975.


Assad Kotaite

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GENEVA, 17 MARCH - 9 MAY 1975

ICAO Observer, Dr. C. Gómez Jara, Director, Legal Bureau

(Attended only from 28 April until the end)

Introduction

1. Following my report on the Second Session of the Third United Nations Conference on the Law of the Sea (see Memorandum to Council Representatives SG 746/75 dated 28 January 1975), I am reporting now on attendance at the Third Session of the Conference.

Instructions to the ICAO Observer

2. Taking into account the discussion in Council, at its 12th meeting of the 34th Session on 26 March 1975 (C-WP/6154), the ICAO Observer was to attend the Conference from 28 April, and was instructed not to state any official position on behalf of the Council or on behalf of the Organization as such. He should speak whenever he felt it necessary to clarify factual questions relating to the regime that presently governs international civil aviation as it emanates from the Chicago Convention and its Annexes. He should be absolutely neutral and should not commit the Organization to any future course of action.

Items of interest for ICAO

3. As a result of the Caracas Session last summer, Document A/CONF.62/C.2/WP1 was elaborated, containing the main trends which have emerged from the proposals submitted either to the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction or to the Third United Nations Conference on the Law of the Sea. The purpose of such paper was to focus the discussion of each of the items allocated to the Second Committee on the fundamental issues.

The items of interest for ICAO were included in that paper, namely, territorial sea, straits, exclusive economic zone and archipelagos. Taking into account the character of the document, those items were dealt with through different formulae, which sometimes were alternatives and on occasion quite incompatible with one another.

Organization of the work in the Second Committee

4. At the Geneva Session, the work was conducted informally, for which purpose several informal consultative groups were established to deal with the different items allocated to the Second Committee. In accordance with the nature of such groups, Delegates made comments expressing their opinions about the formulae contained in document A/CONF.62/C.2/WP1, without decisions being taken.

On 18 April 1975, the Conference adopted a proposal by the President that the Chairmen of the three main Committees should each prepare a single "negotiating text" covering the subjects entrusted to his Committee, taking into account all formal and informal discussions and proposals. The President of the Conference emphasized that the text would constitute a basis for negotiation rather than a negotiated text or accepted compromise, and would not prejudice the position of any Delegations.

These informal negotiating texts prepared by the Chairmen of the three Committees were distributed on the last day of the Conference.

Informal single negotiating text of the Second Committee

5. Comparing this document with the one elaborated at Caracas, it presents the following features:

- (a) it does not contain all the trends and formulae included in the Caracas document;
- (b) it amalgamates some of the alternative formulations, but in other cases it chooses between conflicting proposals;
- (c) in certain cases, a middle course is adopted;
- (d) it is drafted in the form of concrete and correlatively numbered articles, without containing provisions with alternative formulae.

From the foregoing, it could be concluded that the document elaborated at Geneva represents some improvement with regard to the document drafted at Caracas, but this conclusion is more apparent than real, as the document is not an agreed text, but only represents a basis for future negotiations, and a final text acceptable for the purpose of signature is still a long way off.

Manner in which the items of interest for ICAO are regulated in such document

6. Notwithstanding its character, as explained in paragraph 4 above, it appears appropriate to state how the document deals with the items of interest for ICAO.

a) Territorial sea

Article 2 entitles States to establish the breadth of the territorial sea up to a limit not exceeding 12 nautical miles. This maximum breadth of the territorial sea by itself does not mean that it would cause significant difficulties for the present regime of international civil aviation, as many States have already established their territorial sea in 12 nautical miles.

b) Straits used for international navigation

Article 39 grants to all aircraft the right of transit, which means that although the waters of the straits could have the consideration of territorial sea of the States bordering the straits, the possibility of overflying them would exist. That point is going to be a very controversial one, because some States are against the transit by State aircraft. Article 39.3 provides that aircraft in transit shall observe the rules of the air established by the International Civil Aviation Organization as they apply to civil aircraft.

c) Exclusive economic zone

It shall not extend beyond 200 nautical miles from the base line from which the breadth of the territorial sea is measured, and is not considered a part of the high seas.

Article 47.1 establishes that all States shall, subject to the relevant provisions of the Convention, enjoy in the exclusive economic zone the freedom of overflight, and paragraph 2 of the same Article provides that Articles 74, 76 to 97 and 100 to 102 and other pertinent rules of international law shall apply to the exclusive economic zone insofar as they are not incompatible with the provisions concerning the exclusive economic zone.

The Articles to which Article 47.2 refers belong to that part of the draft which deals with the high seas, and their application to the exclusive economic zone represents a recognition that the present extension and regime of the high seas are needed for several purposes quite independent of the economic needs of the coastal State, namely, piracy, hot pursuit, etc.

d) Archipelagos

The notion of archipelagic States is included in the draft. All the waters comprised within the outer limits of the whole of the islands constituting the archipelago would be considered as internal waters, and they and the airspace over them would be subject to the sovereignty of the State. However, for the regime of international civil aviation it is important to note that Article 124 of the draft establishes that aircraft of all States shall have the right of air routes through the archipelago, and that these air routes shall include all normal passage routes used as routes for international overflights through the archipelago.

Attitude of the ICAO Observer

7. Taking into account the instructions imparted to him and the method of work followed by the Conference from 18 April (see paragraph 4 above), it did not seem necessary or pertinent to intervene in order to state what the result for the present regime of international civil aviation would be if certain provisions were adopted. Nevertheless, and in view of the faculties given to the Chairmen of the three main Committees to draft a single negotiating document, I considered it appropriate to have a conversation with the Chairman of the Second Committee in order to remind him about the peculiarities of the international civil aviation regime as it results from the Chicago Convention and the Annexes thereto. I commented especially on the consequences of considering the exclusive economic zone as a maritime area different from the high seas, as it would affect the powers of the Council of ICAO according to Article 12 of the Chicago Convention, and also certain provisions of Annexes 2, 11, 12 and 13. This has been attempted by Article 47.2 of the informal single negotiating text in which, as stated above, it is said that Articles 74, 76 to 97 and 100 to 102 (all of them referring to high seas) and other pertinent rules of international law shall apply to the exclusive economic zone. The formula is not quite satisfactory because, although the Chicago Convention could be considered as a part of such "other pertinent rules of international law", the difficulty continues to exist because the notion of the exclusive economic zone is strange to the Chicago Convention. However, once aware of the existence of the problem, it will be possible in the course of the future work of the Conference to find a better formula, which would assimilate the regime of the exclusive economic zone to that of the high seas for particular purposes, compatible with the character of that zone, one of them being the present regime of international civil aviation.

Place and date of the Fourth Session of the Conference

8. The Plenary of the Conference, held in the morning of 9 May, decided that the Fourth Session of the Conference be held in New York from 29 March until 27 May 1976, that a decision regarding a Fifth Session in 1976 be left to the Fourth Session, and that a request should be made to the United Nations General Assembly to provide facilities for a Fifth Session should such session be necessary. It was also contemplated having informal consultations and negotiations between sessions with the purpose of accelerating the process of negotiation which would facilitate reaching a final agreement on a definitive text of the Convention.